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LimKokWing Institute of Creative Technology Sdn Bhd v Boon Shak Foong & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B–02–937 OF 2005
GOPAL SRI RAM FCJ, SULONG MATJERAIE AND AHMAD MAAROP JJCA
27 APRIL 2009

Civil Procedure — Striking out — Pleading — Whether statement of claim frivolous, vexatious and constitutes abuse of court's process — Whether exercise of summary jurisdiction under O 18 r 19 of the Rules of the High Court 1980 warranted

The plaintiffs/respondents brought an action against the defendant/appellant for misrepresenting the true nature of a degree program offered by the latter's institution. The plaintiffs said that they were induced by misrepresentation to undertake a course which was not properly accredited or recognised. The defendant applied to strike out the statement of claim on the ground that it was frivolous, vexatious and constitutes an abuse of the court's process. The application was dismissed and hence this appeal. The issue to be determined by the court was whether it is a plain and obvious case warranting the striking out of the statement of claim.

Held, dismissing the appeal with costs:
On the facts, there are serious dispute as to the interpretation that had to be placed on some of the relevant materials. In particular it is not plain and obvious that no misrepresentation was ever made because there was some evidence to suggest that the course the plaintiffs pursued was not recognised. In the circumstances, the court was not satisfied that this was a plain and obvious case warranting the exercise of the summary jurisdiction under O 18 r 19 of the Rules of the High Court 1980 (see para 4).

[Bahasa Malaysia summary

Plaintif-plaintif memulakan tindakan terhadap defendan bagi salah representasi mengenai sifat sebenar program ijazah yang ditawarkan oleh defendan. Plaintif menyatakan bahawa mereka didorong oleh salah representasi tersebut untuk mengambil kursus yang tidak diakreditasi dan dikenali dengan sewajarnya. Defendan memohon untuk pembatalan penyataan tuntutan atas alasan bahawa ia adalah remeh, dan membentuk salah guna proses mahkamah. Permohonan tersebut ditolak dan dengan itu rayuan ini. Isu yang perlu diputuskan oleh mahkamah adalah sama ada ia adalah kes

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yang jelas dan nyata yang mewajarkan pembatalan penyataan tuntutan (lihat perenggan 4).

Diputuskan, menolak rayuan dengan kos:
Di atas fakta, terdapat pertikaian yang serius mengenai pentafsiran yang perlu diberikan kepada beberapa material yang relevan. Khususnya, ia bukanlah jelas dan nyata bahawa tidak ada salah representasi dibuat kerana terdapat keterangan untuk menunjukkan bahawa kursus yang diikuti oleh plaintif-plaintif tidak diiktiraf. Dalam keadaan tersebut, mahkamah tidak dipuaskan bahawa ini adalah kes yang jelas dan nyata yang mewajarkan pelaksanaan bidang kuasa terus di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980.]

Notes

For cases on pleadings, see 2(3) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 7534-7549.

Legislation referred to

Rules of the High Court 1980 O 18 r 19

Appeal from:
Civil Suit No MT2–22–627 of 2002 (High Court, Shah Alam)

Dahlia WM Lee (Alex Netto with her) (Kam Woon Wah & Co) for the appellant.
CK Lee (Lee Leow & Co) for the respondents.

Gopal Sri Ram FCJ (delivering judgment of the court):

[1] This is the judgment of the court.

[2] The plaintiffs; and there are 18 of them; brought an action against the defendant for misrepresenting the true nature of a degree program offered by the latter's institution. Although there are a number of wide ranging allegations in the statement of claim, the cause of action appears to be negligence and misrepresentation. Put differently what the plaintiffs are saying is that they were induced by misrepresentation to undertake a course which was not properly accredited or recognised. The defendant applied to strike out the statement of claim on the ground that it is frivolous, vexatious and constitutes an abuse of the court's process. The learned judge who heard the application dismissed it. The defendant now appeals to us.

[3] Now, we must say at once that the statement of claim was very poorly settled. For example, an allegation of fraud is made in general terms with no material particulars. Even in the relevant paragraph of the statement of claim

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alleging negligence, the assertion is general and badly done. But the question is not whether the statement of claim will eventually win the plaintiffs their case in court. The real question is whether the pleading is demurrable, that is to say, that it discloses no cause of action. The plaintiffs may not succeed at the trial. But that does not matter either. What matters is whether this is a plain and obvious case warranting the striking out of the statement of claim.

[4] Learned counsel for the defendant has studiously taken us through some of the relevant materials. However there is a serious dispute as to the interpretation that has to be placed on these. In particular it is not plain and obvious that no misrepresentation was ever made because there is some evidence to suggest that the course the plaintiffs pursued was not recognised. On the material before us we are not satisfied that this is a plain and obvious case warranting the exercise of the summary jurisdiction under O 18 r 19 and our view coincides with that of the learned judge who heard the application in the court below. Mr Lee of counsel for the plaintiffs has given us his solemn undertaking that he will amend the statement of claim by removing the charge of fraud and making other amendments to put his house in order. In the face of that undertaking and given that the statement of claim even as it stands is not demurrable we do not think that we should accede to this appeal.

[5] For the reasons already given we find ourselves in agreement with the orders made by the learned judge. The appeal is dismissed with costs. The deposit will be paid out to the respondents to account their taxed costs.

Appeal dismissed with costs.

Reported by MF Ibrahim